

AUG 06 2007

Serial No.: 10/569,566
Case No.: 21461P
Page No.: 6REMARKS

The Office Action dated July 11, 2007, has been carefully considered. The Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the following remarks. All amendments to the claims are fully supported by Applicants' description and therefore do not introduce new matter

Claims 1-50 were pending in the application. Claims 2-11 have been allowed. Claim 1 has been rejected. Claims 12-48 have been withdrawn from consideration. Claims 49 and 50 are objected to. Claims 2 and 11 have been cancelled. New Claim 53 has been added and is fully supported by Applicants' description at Page 17, lines 29-31. New Claims 54-60 have been added and are fully supported by Applicants' description at Page 4, lines 12-29. Claims 1, 3-10, 49, and 50 have been amended. Claims 1-10, 49, 50, and 53-60 are pending following the above amendments.

Interview Summary

A face-to-face interview at the request of Applicant's attorney Philippe L. Durette was held on July 24, 2007, at the U.S. Patent and Trademark Office in Alexandria, VA, with Examiners Ebenezer Sackey and Golam Shameem. Towards overcoming objections cited in the Office Action dated July 11, 2007, amendments to all pending claims proposed by Applicants' attorney were discussed in addition to proposed amendments to all pending claims in copending Applications No. 10/874,992 and 10/570,409. No agreement was reached with respect to the claims. However, it was agreed that Applicants' attorney would present arguments to rebut the rejections of record in each of the cited applications. Additionally, it was agreed that diffractograms would be recited in pertinent claims to obviate the double patenting rejection of record.

Serial No.: 10/569,566
Case No.: 21461P
Page No.: 7

Election/Restrictions

Pursuant to a telephonic restriction under 35 U.S.C. 121 and 372, dated July 2, 2007, Applicants affirm the election without traverse of Group I, claims 1-11 and 49-50, drawn to crystalline dihydrogenphosphate salt anhydrate Form I compounds, composition, and method of using the compounds. Claims 12-48 are hereby withdrawn from further consideration as being drawn to non-elected subject matter. Pursuant to this election, the Applicants hold the inventions defined by Groups II, III, IV, and V in abeyance for further prosecution in a divisional application(s) at a later date.

Claim 1 stands rejected on the grounds of "same invention" double patenting under 35 U.S.C. § 101.

Claim 1 of the present application has been amended to recite a unique crystalline anhydrate (designated Form I) of Compound I disclosed in the application with distinguishing X-ray powder diffraction peaks. Support for this amendment can be found on page 16, lines 11-15, of Applicants' description. Claim 1 of copending Application No. 10/570,409 is also being amended to recite a separate crystalline anhydrate form of Compound I (designated Form IV) which is distinct from the crystalline anhydrate form of Claim 1 of the present application as evidenced by their X-ray powder diffraction patterns and solid state carbon-13 and fluorine-19 NMR spectra. The amendment to Claim 1 of copending Application No. 10/570,409 is being provided in a separate reply to an Office Action for SN 10/570,409, dated July 21, 2007, which is being filed simultaneously with the US Patent Office with the present amendment by way of facsimile transmission to Examiner Ebenezer Sackey of Art Unit 1624. The Applicants maintain that the anhydrate form of the present application is not the "same invention" as the anhydrate form of amended Claim 1 of copending Application No. 10/570,409, and they respectfully request withdrawal of the section 101 double patenting rejection.

Serial No.: 10/569,566
Case No.: 21461P
Page No.: 8

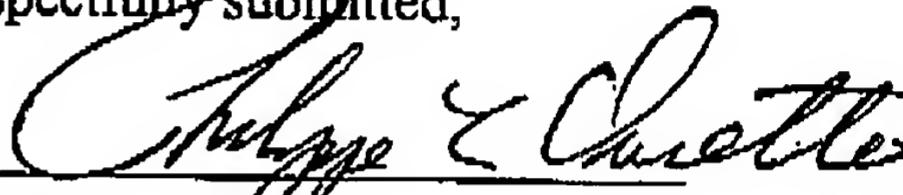
Claims 49 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14 and 15 of copending Application No. 10/570,409.

Claim 1 and dependent Claims 49 and 50 of the present application have been amended to recite a unique crystalline anhydrate of Compound I with the indicated distinguishing X-ray powder diffraction peaks. Support for this amendment can be found on page 16, lines 11-15, of Applicants' description. Claim 1 and dependent Claims 14 and 15 of copending Application No. 10/570,409 are also being amended to recite a separate crystalline anhydrate form of Compound I which is distinct from that of Claim 1, 49 and 50 of the present application. The amendment to the claims of copending Application No. 10/570,409 is being provided in a separate reply to an Office Action for SN 10/570,409, dated July 21, 2007, which is being filed simultaneously with the US Patent Office with the present amendment by way of facsimile transmission to Examiner Ebenezer Sackey of Art Unit 1624. The Applicants maintain that the particular crystalline anhydrate form of Compound I of the present application does not suggest the crystalline anhydrate polymorph of copending Application No. 10/570,409. Therefore, the Applicants maintain that the anhydrate form (designated Form I) of the present application is patentably distinct from the anhydrate form (designated Form IV) of amended Claims 1, 14, and 15 of copending Application No. 10/570,409, and they respectfully request withdrawal of this double patenting rejection.

Serial No.: 10/569,566
Case No.: 21461P
Page No.: 9

The Applicants believe that all of the objections have been overcome by amendment, and they therefore earnestly solicit an early Notice of Allowance.

Respectfully submitted,

By 

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